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ALEXANDER L. STEVAS,
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

RAMIRO ARANGO

Appellant

vs

THE FLORIDA BAR

Appellee

ON APPEAL FROM AN ORDER GIVEN BY
THE FLORIDA SUPREME COURT

JURISDICTIONAL STATEMENT BY THE APPELLANT

RAMIRO ARANGO pro se
154 Giralda Ave
Coral Gables, Florida 33134
Telf: (305) 448-4728

QUESTIONS PRESENTED

1. Violation of the Federal principles of due process and equal protection of the laws by the existence in Florida of a double standard of Justice, applied simultaneously for correcting the same conduct, the "unauthorized practice of law" with dual legal forums, different procedural rules, and diverse penalty.

One system created in 1925 by the Florida Statute 454.23; the other, in 1968, by the new Florida Constitution and the Florida Bar Integration Rules.

2. Double jeopardy violations created as a result of both systems applied simultaneously to one defendant with the use of the same evidence for both jurisdictions in violation of Federal Principles.

3. In this case in violation of Federal Principles, the Circuit Judge acting as referee for the Florida Supreme Court recommended a sentencing without jail, and 5 1/2 months later, without new facts or evidence, neither a new hearing, made a second recommendation with jail time sentencing.

4. The Defendant suffered in his case several violations of the federal principle of procedural due process.

a) The prosecutor (Florida Bar) was joined by one private prosecutor.

b) In the Judgment of guilty was not included a recital of the facts constituting the contempt to the Court (Florida Bar Integration Rules, Art. 16-III-B1-i.)

c) The Florida Bar Integration Art. 16, III-BI-J gives to the defendant the opportunity to present evidence of mitigating circumstances with the recommended sentence to be pronounced in open Court in the presence of the Respondent. The Defendant received the sentencing by mail and was denied all of his rights as per this Rule.

d) The Florida Bar Integration Art. 16, III-A-3d says that the "Florida Rules of Civil Procedure" must apply to these

cases. In this case the Judge-Referee applied the "Florida Rules of Criminal Procedure".

e) In this case the guilt was not proven "beyond a reasonable doubt" as says the Florida Bar Integration Rules, Art. 16, III-BI-g.

5. The Provisions of Art. 16 of the Florida Bar Integration Rules are unconstitutionally vague giving jail terms for indirect criminal contempt without ascertainable standards of guilt in breach of federal principles of due process and equal protection of the laws.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1984

No.

RAMIRO ARANGO
Appellant

vs.

THE FLORIDA BAR
Appellee

ON APPEAL TO AN ORDER GIVEN BY THE FLORIDA SUPREME CORT

JURISDICTIONAL STATEMENT BY THE APPELLANT

As per Rule 15 of the Supreme Court Rules, the Appellant submits the following statement:

1. **REPORTS AND OPINIONS delivered in ths State Court:** (See appendix Final Order dated 10-25-84 and Order denying rehearing dated 1-21-85).

2. **Grounds on which the Jurisdiction of this Court is invoked:**

a. Nature of the proceeding and the Statute pursuant to which it is brought the case to the attention of the Supreme Court of the United States:

The U.S. Supreme Court's Appellate Jurisdiction is invoked to deal with an appeal to Florida Supreme Court's Order dated 10-25-1984 referred to a case concerning violations to the Fifth & Fourteenth Amendments of the Federal Constitution. This is the State Court of last resort for this case.

b. Date of the Order sought to be reviewed.

Supreme Court of Florida's Order dated October 25th, 1984 in the case No. 62, 075 and Order dated January 21st, 1985 denying the motion for rehearing.

c. The Statutory provisions conferring jurisdiction to this Court: Title 28 USC Sections 1257 and 2101 to 2106.

d. Cases sustaining this Court's Jurisdiction:

Whether state court denied to rights asserted under local law protection guaranteed by Federal Constitution is question on which United States Supreme Court's judgment may be invoked. Broad River Power Co. v. State of South Carolina ex rel. Daniel, 1930, 50 S.Ct. 401, 281 US. 537, 74 L. Ed. 1023, rehearing afrirmed 51 S.Ct. 94, 282 U.S. 187, 75 L.Ed. 287.

Supreme Court, in passing on constitutional questions, regards substance, and statute attacked must be tested by operation and effect. Near v. State of Minnesota, 1831, 51 S.Ct. 625, 283 U.S. 697, 78 L.Ed. 1357.

The Supreme Court had jurisdiction of appeal from highest state court, where appeal challenged validity of state statute and raised a substantial federal question as to whether state statute conflicted with federal statute. Reconstruction Finance Corp. v. Beaver County, Pa. 1946, 66 S. Ct. 992, 328 U.S. 204, 90 L. Ed. 1172.

Where highest court of state determined that state statute did not violate U.S.C.A. Const. Amend. 14, 1. United States Supreme Court had jurisdiction on appeal. Winters v. People of State of N.Y. N.Y. 1948, 68 S. Ct. 556, 333 U.S. 507, 92 L. Ed. 840.

The scope of a habeas corpus proceeding brought in a state court by one convicted in the courts of such state is a state and not a federal question, and where the state court treated the proceeding as properly raising issues of federal constitutional rights. United States Supreme Court has jurisdiction and such issues are open there. Herndon v Lowry, Ga. 1937, 57 S. Ct. 732, 301 U.S. 242, 81L. Ed. 1066.

Where state statute was challenged in state court under due

process clause of U.S.C.A. Const. Amend. 14 case was properly before Supreme Court on writ of error. Miller v. Schoene, Va. 1928, 48 S. Ct. 246, 276 U.S. 272, 72 L. Ed. 568.

In reviewing the judgment of a state court in a case in which it was unsuccessfully contended that a state law deprived a party of rights secured by the Federal Constitution the Federal Supreme Court is concerned not with the characterization or construction of the state law by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state. Corn Product Refining Co. v. Eddy, 1919, 39 S. Ct. 325, 249 U.S. 427, 63 L. Ed. 689.

The power of the United States Supreme Court to undo conviction in state courts is limited to the enforcement of those fundamental principles of liberty and justice which are secured by U.S.C.A. Const. Amend. 14. McNabb v. U.S., Tenn. 1943, 63 S. Ct. 608, 318 U.S. 322, 87 L. Ed. 819, rehearing denied 63 S. Ct. 1322, 319 U.S. 784, 87 L. Ed. 1727.

Where a right is claimed in a state court arising under a statute of the United States, a question is presented reveiwable by the Supreme Court of the United States, Supreme Lodge, etc. v. Knights of Pythias of North America etc., 1912, 59 So. 88, 102 Miss 280.

e. The constitutionality and validity of the Florida Bar Integration Rule, Article 16 is involved. Its text is in the Appendix.

Article 5, Sec. 15, Florida Constitution, grants exclusive jurisdiction in the Supreme Court to regulate the admission of persons to the practice of law and provides as follows:

"The Supreme Court shall have exclusive jurisdiction to

regulate the admission of persons to the practice of law and discipline of persons admitted." (id)

3. The questions presented by the appeal:

a) Constitutionality of the Florida Bar Integration Rules, Article 16.

b) Violation of the federal principles of due process and equal protection by the existence in Florida of a double standard of justice applied simultaneously for correcting the same conduct, the unauthorized practice of law, with dual legal forums, in the State Circuit Courts, and since 1968 Florida Constitution, with the "sole exclusive" forum of the Florida Supreme Court.

c) Violations to Federal Procedural Due Process, Double jeopardy principles, Fifth & Courteenth Federal Constitution amendments.

4. STATEMENT OF THE CASE AND FACTS

The Appellant in this case is an American citizen of Cuban origin, member of a group of Cuban-Americans residents in Florida who were practicing attorneys in Cuba and applied to get their license to practice in Florida through an official program created by an Order given by the Supreme Court of Florida in 1973, creating a "Cuban American Lawyers Institute" (CALI) as a way for satisfying a "public welfare need" of the numerous Cuban Tax payers community in Florida, offering the CALI applicants two years of intensive common law studies at Miami or Gainesville Universities and the possibility of earning their Florida license through a bar exam. The appellant earns his livelihood doing paralegal works for several licensed attorneys while he waits to get his license to practice.

The Florida Bar started proceedings in the Supreme Court of Florida as per 1968 Florida Constitution to prosecute the

Appellant under Article 16 of the Florida Bar Integration. Rules for "unauthorized practice of Law". The Florida Constitution make an exclusive province of the Supreme Court the regulation of the practice of law in the state.

Simultaneously, as a parallel prosecution to correct the same conduct, the State of Florida charged the Appellant with a violation of Florida Statute 454.23 (enacted in 1925) for the misdemeanor of "unauthorized practice of law", in the Eleventh Circuit Court of Florida, in and for Dade County. He was found guilty and sentenced with the maximum sentencing for said misdemeanor of 364 days in jail.

The Florida Supreme Court found the Appellant also guilty of indirect criminal contempt with a sentencing of confinement of 120 days and costs in the amount of $2931.79.

The prosecutors for both cases communicated in between them during the prosecutions, interchanging and using the same evidence (photos of Appellant's office) for both cases.

The Appellant moved the Florida Supreme Court for Rehearing, Clarification, New Trial, Revise and/or Amend its Final Order dated October 25th, 1984 challenging for vagueness the Constitutionality of the Florida Bar Integration Rules, Art. 16, alleging double Jeopardy and breaches to the federal principles of due process and equal protection of the Laws. This motion was denied on January 21, 1985 giving to the Appellant credit for time served under the sentencing given to him by the 11th Circuit Court of Florida.

A notice of appeal invoking the U.S. Supreme Court Appellate Jurisdiction was filed with the Florida Supreme Court dated on January 30th, 1985.

By 1968 Florida Constitution the Florida Supreme Court is the legal forum to know exclusively of "unauthorized practice of law" cases. The U.S. Supreme Court's Jurisdiction is the next legal forum to apply for remedy.

5. GROUNDS UPON WHICH THE FEDERAL QUESTIONS ARE SUBSTANTIAL IN THIS STATE COURT'S CASE.

The Federal Court never dealt before with the existence in

Florida of a dual legal system running parallel and applied concurrently, as in the Appellant's case, for correcting the "unauthorized practice of law" conduct.

In 1925 the Florida legislature enacted the Statute 454.23. Prosecutions for violations under said Statute followed the Florida Rules for Criminal Procedure.

In 1968 the new Florida Constitution (Art. 4, section 15) gave to the State Supreme Court the exclusive province for regulating the practice of law in the State, and by the Florida Bar Integration Rules, Art. 16, a new procedure was given for correcting the unauthorized conduct in exclusion of the Florida Rules for Criminal Procedure.

This latter system superseaded by implication the 1925 Statute. Nevertheless the Florida Courts continue to apply both systems concurrently in breach of the federal due process and equal protection principles of the Fourteenth Amendment.

The Appellant was prosecuted simultaneously under both legal systems in both legal forums receiving double sentencing in breach of the Federal Principle of double jeopardy.

During the proceedings in the Florida Supreme Court the Judge Referee breached the federal principles of due process and equal protecion of the laws by changing his sentencing without new facts or new evidence neither a new hearing, from contempt, to jail, 5 1/2 months later, in a double jeopardy federal breach.

The Judge-Referee in these proceedings breached the federal principle of procedural due process by breaching several times the proceedings as given by the Florida Bar Integration Rules, Article 16.

The provisions of the Art. 16 of the Florida Bar Integration Rules are unconstitutionally vague giving jail corrections for indirect criminal contempt without ascertainable standards of guilt, in breach of federal principles.

CONCLUSION

The Supreme Court of the United States should take Jurisdiction and know the case on the merits.

Respectfully submitted.

RAMIRO ARANGO, PRO SE
154 Giralda Ave
Coral Gables 33134, Florida
Tel: (305) 448-4728

March. 1985

APPENDIX

1. Notice of Appeal

2. Supreme Court of Florida, Case No. 62075. Final Order dated October 25th 1984.

3. Supreme Court of Florida, Case No. 62075.
   Order Denying Rehearing, dated January 21st, 1985.

4. 1968 Florida Constitution, Art. V. Section 15.
   Florida Statute 454.23.

5. The Florida Bar Integration Rules, Art. 16.

IN THE SUPREME COURT OF THE UNITED STATES, ON APPEAL FROM A FLORIDA SUPREME COURT'S FINAL ORDER

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 62075

NOTICE OF APPEAL

RAMIRO ARANGO,

Appellant

vs.

THE FLORIDA BAR,

Appellee.

COMES NOW the Appellant and gives notice of appeal invoking the Supreme Court of the United States Jurisdiction on Appeal to a Final Order dated on the 25th of October, 1984, rehearing denied on the 21st of January, 1985, given by the Florida Supreme Court, a State Court of last resort, in its case no. 62075.

The Appellant invokes the Supreme Court of the United States Jurisdiction grounded on breaches to the Federal Constitution Fourteenth Amendment, with violation to the due process principle and violation of the equal protection of the laws by applying in Florida a dual system of justice to correct the same unauthorized conduct with double jeopardy.

I HEREBY CERTIFY that a true copy was mailed on the 30th day of January, 1985 to Attorney H. Glenn Boggs, UPL Counsel, The Florida Bar, Tallahassee, Florida.

I further certify that all parties in interest in the case were duly served.

RAMIRO ARANGO pro se
154 Giralda Avenue
Coral Gables, Florida 33134
Telephone: 305-448-4728

SUPREME COURT OF FLORIDA

No. 62,075

THE FLORIDA BAR, Petitioner,

vs.

RAMIRO ARANGO, Respondent.

(October 25, 1984)

PER CURIAM.

This cause is before the Court pursuant to jurisdiction granted in article V, section 15, Florida Constitution and article XVI Florida Bar Integration Rule. Respondent was charged with the unauthorized practice of law; a referee was appointed to conduct hearings, take evidence and issue findings of fact and conclusions of law. We adopt the referee's report and set it forth herein.

FINDINGS OF FACT

1. Respondent was not and is not a licensed or certified member of the Florida Bar.

2. Respondent is not a licensed Real Estate Broker or salesman in the State of Florida.

3. Respondent maintained offices in the building at 154 Giralda Avenue, Coral Gables, Florida, which contained a law library and offices of other attorneys. A sign on the door of the building, visible to the public, reads "Law Offices" and listed the names of the other attorneys who had offices in the building. Respondent's office contained a wall display of

diplomas from various Universities, including the University of Havana, Juris Doctor in Diplomatic Law; Paris University, Doctor in Financial Sciences; Sorbonne and Heidelberg University; and the Hague Academy of International Law. There was also on display a diploma from the University of Florida Special Program for Former Cuban Lawyers.

The Respondent presented himself in this capacity to the public clothed in the trappings of an attorney.

4. Although on occasion the Respondent appeared on television and was identified by the words "Doctor Ramiro Arango, Abogado," there was no proof that Respondent either solicited said identification nor knew at the time that he was being so identified.

5. Respondents appearance on radio talk shows giving advice to callers regarding various subjects, including immigration matters, was not proven by any facts presented during the hearings before the Referee.

6. During the period from March 1977 to March 1978, Respondent managed the law offices at 154 Giralda Avenue, Coral Gables, Florida, and supervised the work of several attorneys, including Blas E. Padrino. During this period the Respondent referred approximately 150 clients to Mr. Padrino for legal services.

There was no proof that Respondent prepared and filed a Complaint in Small Claims Court and affixed Blas Padrino's name to the document without Padrino's knowledge or permission.

There was no proof Respondent impersonated attorney Padrino during a telephone call Respondent allegedly conducted with an insurance adjustor.

Mr. Padrino testified that a client told him Respondent advised the client to testify falsely in a civil automobile case, but there was no testimony presented from the client at any hearing conducted by this Court.

7. Elisa Tamayo went to Respondent's office in the belief that he was an attorney, for the purpose of helping her with an immigration matter. Miss Tamayo based her belief that Respondent was an attorney upon the trappings of the office, the diplomas on the wall, and a card on Respondent's desk which read "Doctor Ramiro Arango." Miss Tamayo entered an agreement with Respondent that in return for his services in the immigration matter, Respondent would deduct a fee from funds which were due Miss Tamayo from a previous automobile accident case that Respondent allegedly was handling for a Mr. Rollo Karkeet who was reported to be the attorney for Miss Tamayo and her mother in the automobile case. Respondent never advised Miss Tamayo that he was not an attorney of law licensed to practice in the State of Florida. There is in evidence a G-28 form which purports to contain the signature of Rollo Karkeet. Miss Tamayo claims this form was signed in blank by her when she consulted Respondent, and that at no time did Mr. Karkeet sign that document in her presence. Rollox Karkeet testified that he never did any immigration or naturalization legal work for Mr. Jose Tamayo or Miss Elisa Tamayo nor did Mr. Karkeet file a G-28 form for them.

8. Respondent assisted Magdalena Serra in the purchase of a home at 1425 Obispo, Coral Gables, in Dade County and drafted and prepared the Deposit Receipt and Sales Purchase Agreement for the sale of said residence. Respondent signed the document described above as escrow agent Ramiro Arango by Mary L. Dennis Law Office and accepted receipt of a $1,000 deposit and also $500 designated lawyer fees for "closing 1425 Obispo," said check being made payable to Ramiro Arango.

9. Respondent, on behalf of Camille Castro, prepared and drafted a contract between Moises Marcel Quizman and Camille Castro for the sale of four shares of Maraca Corporation stock for the price of $166,667. This matter eventually ended in a law suit being filed regarding the shares in question.

10. Respondent prepared the Deposit Receipt and Sales Purchase Agreement for the purchase of real property, the "Sensations Nightclub" between Maraca Corporation and Moises Quizman. Respondent had dealings with the seller's attorney Mr. Leslie Schere in a manner consistent with that of an attorney representing the buyer, and in said capacity, discussed price, terms, legal problems, payments of monies, mortgage floreclosure matters, and complaints regarding the leakage of the roof. The contract in question did not provide for a roof guarantee clause. This resulted in damage being suffered by the buyer and eventual foreclosure action in June of 1980.

11. Respondent prepared Articles of Incorporation for Anyway Realty Corp., and received payment of $100 from Miss Daisy Alvarez for the purchase of the corporate seal. The preparation of the Articles of Incorporation caused the corporation to be formed and filed with the Secretary of State in Tallahassee.

12. Documents regarding the sale of the property in the above stated matters were signed by attorney Mary Dennis, although Respondent admits drafting and preparing those documents and meeting and discussing the case with the parties involved.

CONCLUSIONS OF LAW

1. Respondent engaged in the practice of law in that he held himself out to the public as an attorney by taking advantage of the trappings of the office of an attorney in setting labeled "law offices". Respondent dealt with the public, who sought legal advice, without informing the public that he was not licensed to practice law.

2. Respondent engaged in the practice of law by preparing contracts for Deposit Receipt and Sales Purchase Agreements for the property described in (7), (8) and (9) above in the

Referre's Finding of Fact. **Keyes Co. v. Dade County Bar Ass'n,** 46 So. 2d. 605 (Fla. 1950).

3. Respondent engaged in the practice of law by advising Miss Tamayo about certain immigration matters and agreed to accept a fee therefore. **State of Florida ex rel. The Florida Bar v. Alexander T. Sperry,** 140 So. 2d 587 (Fla. 1962).

4. Respondent engaged in the practice of law by preparing the Articles of Incorporation for Anyway Realty Corporation. **The Florida Bar v. Town,** 174 So. 2d 395 (Fla. 1965).

Although Respondent alleges that he acted merely in the capacity of an office manager, managing the law firm for Rollo Karkeet, there is no evidence to support the fact that Rollo Karkeet ever engaged Mr. Arango in said capacity nor authorized him to operate and run a law practice in Mr. Karkeet's name. It is obvious that in his capacity the Respondent engaged in such practices that would affect the rights of individuals in the formation of corporations and the sale of purchase of property and shares of stock. This activity would require a certain expertise in the field of law.

Respondent attempts to justify his activities with regard to the matters enumerated above by claiming that he merely acted as a conduit for another attorney. He claims that all he did was to initially interview a client, fill in the blanks on the form for which he had already received information and then conferred with the attorney for the final preparation of said forms. Some of these allegations are disputed by the facts and evidence in this case. The evidence, however, indicates that this was not the limit and extent of the services rendered by Respondent. Said services bordered on the giving of advice and assisting a "client" in the preservations of the client's rights and interests in matters which have been considered legal in nature.

It is settled that a person licensed in the sale and brokerage of real estate may prepare deposit receipts and sales purchase agreements, but in this case Respondent is neither a real estate broker or salesman nor attorney at law and in neither capacity could lawfully engage in such activities.

The manner in which Respondent held himself out to the public by maintaining his offices where he did, and in the manner in which he did, gave leave to the public to expect that he was as he seemed to be, an attorney at law, and therefore engage him in the preservation of their rights and interest. Such activity can in no way be considered, as Respondent would have one believe, the practice of "business consultant" or "office manager." This case would appear quite similar to the case of the **Florida Bar** v. **Fuentes,** 190 So. 2d 748 (Fla. 1966) in which the Respondent was found in violation of the law in that he engaged in the unlawful practice of law under circumstances similar to the one enumerated above.

The referee recommended that respondent be enjoined from further unauthorized practice of law and, further, that respondent be adjudicated guilty of indirect criminal contempt and punished in accordance with article XVI, III (B) (2) of the Florida Bar Integration Rule, by levying of a fine of $2,500 and confinement for five months. Respondent protests the recommended sentence, claiming to have been prevented from presenting evidence in mitigation. However, the record shows that respondent voluntarily waived the sentencing proceeding in open court to which he was entitled and at which such evidence could have been presented. The choice was the respondent's and no error has been committed.

We have accepted the referee's recommendation that respondent be permanently enjoined from the unauthorized practice of law. The order to that effect issued from this Court September 20, 1983. In light of these findings of fact and conclusions of law, and this Court's handling of similar cases, we sentence respondent to one hundred twenty days in jail and suspend ninety days of that sentence. When this opinion becomes final, the sheriff of Dade County is authorized and directed to take respondent into custody and to confine him for thirty days. If respondent does not violate the terms of our continuing injuction for a period of two years, the suspended term of ninety days shall be deemed satisfied. Costs in the amount of $2,931. 79 are assessed against respondent, for all of which let execution issue.

It is so ordered.

ADKINS, OVERTON, ALDERMAN and EHRLICH, JJ.,Concur
BOYD, C.J., Concurs in part and dissents in part with an opinion.

BOYD, C.J., concurring in part and dissenting in part.

I concur in the approval of the finding that Mr. Arango has engaged in the unauthorized practice of law. I dissent, however, to the punishment imposed by the Court. It will be recalled that Ms. Furman was given a clear opportunity to mend her ways before this Court finally, in desperation, chose to punish her open contempt of Court with a jail sentence. **See The Florida Bar v. Furman**, 451 So. 2d 808 (Fla. 1984); **The Florida Bar v. Furman**, 376 So. 2d 378 (Fla. 1979), **appeal dismissed**, 444 U.S. 1061 (1980). When finally ordered jailed, she had contemptuously and conspicuously flouted this Court's cease-and-desist order. I would give Mr. Arango the same opportunity to correct his errors. An injuction and a conditional fine order should be a sufficient sanction to impose upon him. Only upon further violation should Mr. Arango be subject to the same kinds of punishment Ms. Furman received.

John F. Harkness, Executive Director; John Berry, Staff Counsel; Catherine L. Dickson, UPL Counsel; H. Glenn Boggs, Bar Counsel; Tallahassee, Florida; and James P. Hahn, Chairman Standing Committee on Unauthorized Practice of Law, Lakeland, Florida,

for Petitioner

R. Alan Hale, Fort Lauderdale, Florida,

for Respondent

IN THE SUPREME COURT OF FLORIDA
MONDAY, JANUARY 21, 1985

THE FLORIDA BAR,	**	
Petitioner,	**	
vs.	**	
RAMIRO ARANGO,	**	CASE NO. 62,075
Respondent.	**	

Respondent is to receive credit against the sentence imposed by order of this Court dated October 25, 1984 for time served pursuant to the sentence imposed by the Circuit Court for the Eleventh Judicial Circuit of Florida in case number 82-19035.

In all other respects the Motion for Rehearing, Clarification, New Trial, Revise and/or Amend its Final Order Dated October 25, 1984, with Incorporated Memorandum of Law is hereby denied.

The Motion for Stay of Execution is granted and the proceedings in this Court are stayed to and including February 20, 1985, to allow respondent to seek review in the Supreme Court of the United States and obtain any further stay from that court.

It is so ordered.

C

cc: Mr. Ramiro Arango
John T. Berry, Esquire
James P. Hahn, Esquire
Catherine L. Dickson, Esquire
H. Glenn Boggs, Esquire
Hon. Bobby L. Jones, Sheriff.

A True Copy

TEST:

Sid White
Clerk Supreme Court

1968 FLORIDA CONSTITUTION

ARTICLE V

SECTION 15. Attorneys; admission and discipline.– The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

FLORIDA STATUTE 454.23
(Enacted in 1925)

Penalties: Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself out to the public as qualified to practice law in this state, or who wilfully pretends to be, or wilfully takes or uses any name, title, addition or description implying that he is qualified, or recognized by law as qualified to act as a lawyer in this state, and any person entitled to practice who shall violate any provision of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in F.S. 775.083.

THE FLORIDA BAR INTEGRATION RULES

ARTICLE XVI. UNAUTHORIZED PRACTICE OF LAW

I. JURISDICCION

Pursuant to the provision of Article V, Section 15 of the Florida Constitution, this Court has inherent jurisdiction to prohibit the unauthorized practice of law.

II. INVESTIGATION

A. The Florida Bar, as an official arm of this Court, is charged with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unauthorized practice of law and the prosecution of alleged offenders. The Board of Governors of the Florida Bar shall establish not less than one (1) Unauthorized Practice of Law Committee in each judicial circuit. The Board of Governors of The Florida Bar shall establish a Standing Committee on Unauthorized Practice of Law consisting of not less than fifteen (15) members which shall include not less than three (3) lay persons. The Standing Committee shall be responsible for each of the circuit committees.

1. The circuit committees shall conduct investigations of unauthorized practice of law.

2. Each circuit committe shall be appointed by the Board of Governors and shall consist of not less than three members of The Florida Bar.

3. The terms of the members of circuit committees shall begin on the first day of July and shall end on the next succeeding thirtieth, day of June or until such time as their successors are appointed and qualified. The expiration of the term of any member shall not disqualify such member from concluding any investigations pending before him.

4. There shall be a chairman designated by the Board of Governors and a vice chairman and secretary designated by the chairman of each circuit committee.

5. Any member may be removed from his office by the Board of Governors.

6. A majority of a circuit committee shall constitute a quorum.

7. It shall be the duty of each circuit committee to investigate, with dispatch, all reports of unauthorized practice of law and to make prompt written report of its investigation and findings to the Standing Committee on Unauthorized Practice of Law.

B. It shall be the duty of the Standing Committee to receive and evaluate circuit committee reports and make its findings and recommendations to the Board of Governors. The Board of Governors shall act upon said reports, findings and recommendations and determine whether or not litigation should be instituted against any alleged offender. The Board of Governors may approve civil injuntive proceedings, indirect criminal contempt proceedings, or a combination of both, and such other relief as may be appropriate.

1. The duties of the Standing Committee shall include, but not be limited to, the following:

a. The consideration and investigacion of activities which may, or do, constitute the unauthorized practice of law;

b. The supervision of the several circuit committees on unauthorized practice of law which shall include, but not be limited to:

(i) Prescribe rules of procedure for circuit committees;

(ii) Assign reports of unauthorized practice of law for investigations;

(iii) Reassign, or withdraw, matters previously assigned and exercise final authority to close cases;

(iv) Join with a circuit committee in a particular investigation;

(v) Assign staff investigators and staff counsel to conduct investigations on behalf of or in concert with the circuit committees; and

(vi) Suspend circuit committee members and chairmen for cause, and appoint a temporary circuit committee chairman where there has been a suspension, resignation or removal, pending the appointment of a permanent chairman by the Board of Governors.

c. The reporting of recommendations to the Board of Governors when litigation should be instituted in order to prevent the unauthorized practice of law;

d. The initiation and supervision of litigation authorized by the Board of Governors, including the power to delegate responsibility to staff counsel or an assistant staff counsel to prosecute such litigation;

e. The issuance of advisory opinions, including informal advisory opinions by authorized staff counsel, as to whether a particular activity constitutes the unauthorized practice of law as provided in Article XI of the Integration Rule; and

f. The giving of advice regarding unauthorized practice of law policy to the officers, Board of Governors, staff, sections, or committees of The Florida Bar as requested.

2. Upon receiving a written application of the chairman of the Standing Committee or of a circuit unauthorized practice committee alleging facts indicating that a person or entity is or may be unlawfully practicing law and that the issuance of a subpoena is necessary for the investigation of such unauthorized practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the Chief Justice for the attendance of any person and production of books and records before the investigating circuit committee or any member thereof designated in such application at the time and place within its circuit designated by the investigating circuit committee. Such subpoenas shall be returnable to the circuit court of the residence or place of business of the person subpoenaed. A like subpoena shall issue upon application by any person or entity under investigation.

3. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Supreme Court

or by the circuit court of the circuit to which the subpoena is returnable or where the contemner may be found. The circuit court to which the subpoena is returnable shall have power to enter such protective orders as may be necessary for the enforcement of the subpoena.

4. Each circuit committee or member thereof conducting investigations is empowered to take and have transcribed the testimony and evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

5. The Board of Governors shall employ one or more assistant staff counsel and other nployees including investigators to assist the Standing Committee on Unauthorized Practice of Law to carry out the responsibilities of the Standing Committee as prescribed herein.

C. All unauthorized practice of law investigation matters including files, correspondence, preliminary investigation reports, interoffice memoranda, and records of investigations are under the supervision of the Supreme Court and are subject to such public inspection as the Court shall direct.

III. LITIGATION

A. Civil Injunction Proceeding

1. Complaints shall be by written petition filed in this Court by The Florida Bar and in its name.

2. Each such petition shall be processed in this Court in accordance with the following procedure:

a. The petition shall not be framed in technical language, but shall with reasonable clarity set forth the alleged facts constituting the unauthorized practice of law. A prayer for relief may be included in the petition, but shall not be required.

b. This Court, upon consideration of any petition no so filed, may issue its order to show cause directed to the respondent commanding said respondent to show cause if any there be, why the respondent should not be enjoined from the alleged unauthorized practice of law, and further

requiring the respondent to file with the Court within 20 days after service of the petition and show cause order on him, a written answer admitting or denying the matter set forth in the petition. The legal sufficiency of the petition may, at the option of the respondent, be raised by motion to dismiss filed prior to or at the time of the filing of the answer. The filing of a motion to dismiss prior to the filing of an answer shall postpone the time for the filing of an answer until ten days after disposition of said motion. The order and petition shall be served upon the respondent in the manner provided for service of process by Rule 1.070(b), Florida Rules of Civil Procedure. Service of all other pleadings shall be governed by the provisions of Rule 1.080, Florida Rules of Civil Procedure.

c. Any party may request oral argument upon any question of law raised by the initial pleadings. The Court may, in its discretion, set the matter for oral argument upon the next convenient motion day, or at such time as it deems appropriate.

d. If no response or defense is filed within the time permitted, the allegations of the petition shall be taken as true for purposes of that action. The Court will then, upon its motion or upon motion of any party, decide the case upon its merits, granting such relief and issuing such order as might be appropriate; or it may refer the petition for further proceedings according to this Article.

e. If a response of defense filed by a respondent raises no issue or issues of material fact, any party, upon motion, may request a judgment on the pleadings and the Court may rule thereon as a matter of law.

f. The Court, upon its motion or upon motion of any

party, shall refer questions of fact to a referee for determination. The referee shall be a circuit judge of the State of Florida.

3. Proceedings before the referee shall be in accordance with the following:

a. The proceeding before the referee shall be held in the county where the respondent resides or where the alleged offense was committed, which ever shall be designated by the Court.

b. Upon assignment of a cause for trial, the Board of Governors shall appoint bar counsel to prosecute the same before the referee.

c. Witness subpoenas shall run in the name of this Court and shall be issued by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be a contempt of this Court and may be punished by this Court or by any circuit court where the action is pending or where the contemner may be found, as if said refusal were a contempt of that court.

d. The Florida Rules of Civil Procedure, including those provisions pertaining to discovery, not inconsistent with this Article, shall apply in proceedings before the referee. The powers and jurisdiction generally reposed in "the court" under said Rules may in this action be exercised by the referee. The Florida Bar may in every case amend its petition one time as of right, within 60 days after the filing of the order of reference to a referee.

e. Review of interlocutory rulings of the referee may be had by petition to this Court filed within 30 days after entry of the ruling complained of. A supporting brief and a transcript containing conformed copies of pertinent portions of the record in the form of an appendix shall be filed with the Court by a party seeking such review. Any opposing party may file his responsive brief and appendix containing any additional portions of the record deemed pertinent to the issues raised within ten days thereafter. The petitioner

may file a reply brief within five days of the date of service of the opposing party's responsive brief. Any party may request oral argument at the time his brief is filed or due. Interlocutory review hereunder shall not stay the cause before the referee unless the referee or this Court on its motion or upon motion of any party, shall so order.

4. The referee shall report in writing to the Court his findings of fact, conclusions of law and recommendations for final disposition of the cause. The original record shall be filed with his report. A copy of the referee's report shall be served upon all parties by the referee at the time the same is filed in this Court.

5. Objections to the report of the referee may be filed in this Court by any party aggrieved, withing 30 days after the filing of said report. If the objector desires, he may file a brief in support of his objections at the time his objections are filed. Any other party may file a responsive brief within 20 days after service of objector's brief. The objector may file a reply brief within ten days of service of the opposing party's responsive brief. Oral argument will be allowed at the Court's discretion and will be governed by the provisions of Florida Appellate Rules, Rule 3.10.

6. Upon the expiration of the time to file objections to the referee's report, the Court shall review the report of the referee, together with any briefs or objections filed in support of or opposition to such report. After review, the Court shall determine as a matter of law whether the respondent has engaged in the unauthorized practice of law and whether his activities should be enjoined by appropriate order.

7. Nothing set forth in this Rule shall be construed to prohibit or limit the right of the Court, upon proper application, to issue a preliminary or temporary injuction, or at any stage of the proceedings, to enter any such order as to the Court may seem proper when public harm or the possibility thereof is made apparent to the Court, in order that such harm may be

summarily prevented or speedily enjoined.

B. Indirect Criminal Contempt Proceedings.

1. An indirect criminal contempt proceeding for unauthorized practice of law shall be prosecuted in the following manner:

a. Upon receiving a sworn petition of the president of The Florida Bar, or the chairman of the Standing Committee on Unauthorized Practice of Law, alleging facts indicating that a person, firm or corporation is or may be unlawfully practicing law, and containing a prayer for a contempt citation, the Court may issue an order directed to the respondent, stating the essential allegations charged and requiring respondent to appear before a referee appointed by the Court to show cause why respondent should not be held in contempt of this Court for unauthorized practice of law. The referee shall be a circuit judge of the State of Florida. The order shall specify the time and place of the hearing, and a reasonable time shall be allowed for preparation of the defense after service of the order on the respondent.

b. Any respondent, who is determined to be insolvent by the referee, shall be entitled to the appointment of counsel. In proceedings for the determination of insolvency, there shall be a presumption of solvency, and the respondent shall have the burden of rebutting the presumption by competent proof. The following facts shall be prima facie evidence of solvency:

(1) If the respondent has been released on bail in the amount of fifteen hundred dollars or more;

(2) If the respondent has no dependents and his gross income exceeds seventy-five dollars per week; the income limit shall be increased by ten dollars per week for each of the first two dependents of the defendant and by five dollars per week for each dependent beyond the first two;

(3) If the defendant owns cash in excess of $300.

c. The court shall also consider the following additional circumstances in determining insolvency:

(1) The probable expense and burden of defending the case;
(2) The ownership of, or equity in, any trangible or intangible personal property or real property or the expectancy of an interest in any such property by the respondent; and
(3) The amount of debts owed by the respondent or debts that might be incurred by the respondent because of illness or other misfortunes within his family.

d. Venue for the hearing before the referee shall be in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the Court.

e. The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing. A respondent's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

f. The Court or referee may issue an order of arrest of the respondent if the Court or referee has reason to believe the respondent will not appear in response to the order to show cause. The respondent shall be admitted to bail in the manner provided by law in criminal cases.

g. The respondent shall be arraigned at the time of the hearing before the referee, or prior thereto upon his request. A hearing to determine the guilt or innocence of the respondent shall follow a plea of not guilty. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against him. The respondent may testify in his own defense. No respondent may be compelled to testify. A presumption of innocence shall be accorded the respondent, and The Florida Bar, which shall act as prosecuting authority, must prove guilt of the respondent beyond a reasonable doubt.

h. The referee shall hear all issues of law and fact and all evidence and testimony presented shall be transcribed.

i. At the conclusion of the hearing, the referee shall sign and enter or record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty.

j. Prior to the pronouncement of a recommended sentence upon a judgment of guilty, the referee shall inform the respondent of the accusation and judgment against him and afford him the opportunity to present evidence of mitigating circumstances. The recommended sentences shall be pronounced in open court and in the presence of the respondent.

k. The judgment and recommended sentence, upon a finding of "guilty", together with the entire record of proceedings shall then be forwarded to this Court for approval, modification or rejection based upon the law. The respondent may file objections, together with a supporting brief, to the referee's judgement and recommended sentence within 30 days of the date of filing with the Court of the referee's judgment, recommended sentence, and record of proceedings. The Florida Bar may file a responsive brief within ten days after service of respondent's brief. The respondent may file a reply brief within five days after service of The Florida Bar's responsive brief.

2. The punishment for an indirect criminal contempt under this Article shall be by fine, not to exceed $2,500, imprisonment of up to five months, or both.

3. Nothing set forth herein shall be construed to prohibit or limit the right of the Court to issue a permanent injuction in lieu of or in addition to any punishment imposed for an indirect criminal contempt.

Added May 19, 1965 (175 So. 2d 530). Amended Nov. 5, 1969 (227 So.2d 665); July 17, 1974, effective Aug. 1, 1974 (297 So.2d 304); April 30, 1975 (317 So.2d 65); July 9, 1975 (326 So.2d 7); Jan. 29, 1981 (399 So. 2d 951).

CERTIFICATION OF SERVICE

28 U.S.C. section 2403 (B) may be applicable, therefore, I, hereby certify that three copies were mailed on the 27th day of March 1985 to the Florida State Attorney's office at Tallahassee Florida, and att. Glenn Boggs UPL Committee, the Florida Bar Bldg., Tallahassee, Florida.

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